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ROBERT SEAVER

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-32

CURTIS C. FLOOD, *Petitioner,*

v.

BOWIE K. KUHN, ET AL., *Respondents.*

PETITIONER'S REPLY BRIEF

ARTHUR J. GOLDBERG
1101 17th Street, N. W.
Washington, D. C. 20036

JAY H. TOPKIS
345 Park Avenue
New York, New York 10022

Attorneys for Petitioner

DANIEL P. LEVITT
MAX GITTER
PETER WESTEN
RICHARD M. MOSS
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
1775 K Street, N. W.
Washington, D. C. 20006
Of Counsel

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PETITIONER'S REPLY BRIEF

Petitioner believes it might be of use to the Court if he addresses several points raised by respondents, including their "economic" argument, their claim as to indispensability of the reserve system, the relevance of the situation in other professional team sports, the extent to which the courts below were informed regarding state law, and the inapplicability of the so-called labor exemption to this case.

A. Baseball's argument that it is too poor to comply with the antitrust laws is both irrelevant and false.

Respondents seek to escape application of the antitrust laws to Baseball by arguing that their industry is economically incapable of adjusting to changes in the reserve system. This Court has repeatedly declined

to give weight to such excuses for noncompliance with the antitrust laws.[1] And apart from the doubts the argument insinuates regarding the effectiveness of the reserve system in protecting Baseball from adversity, it is factually untrue.

Respondents represent that 13 of the 24 Major League clubs suffered "losses" in 1969; that in the aggregate the 24 clubs "showed total losses in the millions," and that in consequence the industry's ability to adjust to change is marginal. Resp. Brief p. 7. The facts are quite different. Baseball's own figures, supplied by its own accountant Arthur Anderson & Co. and admitted into evidence, reflect that between 1965 and 1969 the Major League clubs had aggregate operating income of $40 million, on revenues of $510 million. Even after $28 million in players' contracts was amortized, paper transactions with no effect upon actual cash flow and with substantial tax benefits to those high income individuals who own professional baseball teams, the clubs reported aggregate net income after taxes of $30 million. (Pl. Ex. 7)

In the year 1969, again by Baseball's own figures, the 24 clubs, including four new expansion franchises, reported operating income of $4.6 million, and aggregate net income of over $6 million before amortization of players' contracts. Excepting the four expansion teams, which were permitted to amortize much of the $30 million paid to gain entry into Major League Baseball, the established clubs showed aggregate 1969 net

[1] See, e.g., *Paramount Famous Lasky Corp.* v. *United States*, 282 U.S. 30 (1930), (rejecting claims based upon the "special" needs of the motion picture industry), *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 220-22 (1940); *Fashion Originators' Guild* v. *F.T.C.*, 312 U.S. 457, 467 (1941).

income of $3.5 million, after taxes *and* amortization of players' contracts. (Pl. Ex. 7)

B. The record does not support Baseball's claims regarding the indispensable role of the present reserve system, or the extent to which it has been "relied" upon by investors.

Respondents contend that only the reserve system saved Baseball from the chaotic conditions of a century ago, that in its present form it is the indispensable cornerstone of the sport, and that investors have relied upon whatever immunity was granted to the reserve system by *Toolson*. Each of these assertions rests on little more than the self-serving testimony of the club owners and their hired officials, and each withered under cross-examination.

The assertion that only the reserve system saved Baseball from the chaos of a century ago, and that its modification would bring back the "old days," rests largely on respondent Kuhn's testimony and upon a gross misreading of the Celler Report.[2] Kuhn's position, it turned out, rested on his incredible assumption that the experience of teams which nearly a century ago each grossed less than $40,000 would be a "reliable guide" to how today's multi-million dollar franchises would respond in the absence of today's restrictive reserve system. (A. 277) The authors of the Celler Report did indeed conclude that the various forms of the reserve system had been useful, and that some arrangement to preserve a measure of player continuity was probably necessary. But they also unearthed great and abiding abuses, and declined to recommend

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[2] "Organized Baseball," H. Rep. No. 2002, Subcommittee on Study of Monopoly Power, House Committee on the Judiciary, May 27, 1952 [hereinafter cited as "Celler Report"].

for Baseball a legislative grant of immunity from the antitrust laws precisely because they thought the courts had a vital role to play in "[differentiating] the unreasonable features of baseball's rules and regulations from those which are reasonable and necessary." Celler Report, p. 232.

The assertion that the present reserve system is the essential cornerstone of modern Baseball also rests on little more than self-serving declarations. Even respondent Kuhn had to concede that changes in the reserve system would not necessarily be detrimental to Baseball, and that he could not evaluate the impact of such changes until he knew what they were. (A. 273) Club president McHale testified to the same effect. (A. 303)

Finally, a parade of club owners testified that they had "relied" on *Toolson* when they invested in professional baseball teams. This was, of course, largely beside the point; the prior decisions of this Court are not a proper basis for wagering that it will adhere to a conception of interstate commerce that it rejected years ago. Moreover, the record shows that each investor anticipated that Congress might at any time strip away Baseball's antitrust immunity, and that none had relied upon any immunity from state regulation. Additionally, the purchaser of the Kansas City franchise admitted he had been told by his attorney that the Major League Players Association might bring about changes in the system. See Pet. Brief pp. 24-25. Nevertheless, they invested. Indeed, two of these investors simultaneously made large investments in professional football teams they knew enjoyed no such antitrust immunity. (A. 295, 305) Finally, experienced baseball men like Bill Veeck and Hank

Greenberg testified that they regarded baseball as an attractive investment even were the reserve system to be changed substantially. (A. 384-397, 180-181)

The "quality" of the alleged "reliance interest" developed at trial is illustrated by John J. McHale's testimony. He swore that were it not for *Toolson*, he would not have invested $100,000 (Canadian) and assumed a contingent liability of only $25,000 to purchase a 10 per cent interest in a new Montreal team with an opening net worth of $10.8 million (Canadian), (A. 301-302), all of whose working capital came from advance ticket sales (R. 1329), and which team presumably pays him a substantial salary as club president. Such is the stuff of which "reliance" is made.[3]

C. The less restrictive practices in other sports do indeed illuminate the impermissibility of Baseball's unique system of restraint.

Respondents contend, as they did at trial, that the reserve systems in other professional sports are not really less restrictive than Baseball's, and that those other sports are not analogous. The record demonstrates that professionals in no other sport are so restricted as baseball players. A football player may choose between the National Football League and a career in Canadian football. A basketball player may choose between the NBA and the ABA. And a new

[3] The Court's decision in *Chevron Oil Co.* v. *Huson*, — U.S. —, 30 L.Ed.2d 296, 305-07 (Dec. 6, 1971), ought to put an end to any doubts that prospective application (except as to plaintiff) of a non-criminal decision overruling controlling precedent is available to vindicate any legitimate "reliance interest" in that precedent.

[4] Petitioner takes no position on whether any of these other situations comply with or violate federal or state antitrust laws.

league has been created to provide competitive opportunities for professional hockey players. Only in professional baseball do a small concert of businessmen impose a worldwide boycott on every employment alternative.

Players in other sports do in fact play out their options and sign with other teams in the same league, or jump to competing leagues. Pet. Brief p. 27. And in spite of the plea that a reserve system like Baseball's is essential to preserve professional team sports, the professional basketball owners have proposed a plan, set out as Appendix B to petitioner's brief, which is *substantially* less restrictive than Baseball's. It is no answer to say that Baseball is "different" because basketball and football, unlike baseball (Pete Broberg?), recruit players of already matured skills and preexisting reputation. Established college basketball and football stars receive bonuses and salaries far in excess of that paid by Baseball to unknown young players. Compare petitioner's starting salary of $4,000, and the median salary of all major league baseball players in August 1969 of only $20,000 (A. 360), with the average starting salary for *rookies* in the N.B.A. in 1970-1971 of $46,000. The top twelve *rookies* in the N.B.A. averaged $114,000. Statement by Robert R. Nathan for the N.B.A. and the A.B.A. before the Senate Subcommittee on Antitrust and Monopoly Legislation, in support of S. 2373, Sept. 21, 1971, pp. 19-20. Moreover, so long as Baseball's club owners write off their investments in "player development" [5]

[5] Baseball's "player development" figures are more financial legerdemain. Baseball arrives at the alleged cost of "developing" a major league player by attributing all expenditures on all the thousands of players in professional baseball, all the administrative costs of operating 21 minor leagues and their 155 teams, and all

in the year incurred, or amortize them over a 3 to 5 year period, this is persuasive evidence, indeed an admission, that the restraints upon such players ought not to be for life.

D. Baseball's claim that petitioner did not adequately apprise the courts below of the basis for his state law claims is absurd.

Baseball argues that petitioner was in some way estopped from invoking this Court's rule that state law not be preempted without a "particularized inquiry" because he gave the courts below insufficient "assistance" in identifying and describing the applicable state laws. Resp. Brief, p. 58. Once again, the facts are precisely to the contrary. Paragraph 28 of petitioner's complaint identified the laws of New York and California, *inter alia,* as applicable, and cited specific statutes. (A. 13-14) In his briefs to the trial court, both before and after trial, and to the Court of Appeals, petitioner discussed the law of 14 states and included an exhaustive state law appendix which not only recited the applicable statutes but described and analyzed the case law, including the state cases which dealt directly with Baseball's reserve system. See, e.g., *American League Baseball Club* v. *Chase,* 86 Misc. 441, 465, 149 N.Y.S. 6, 19 (1914) (reserve clause vio-

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scouting expenses, solely to the few players who reach the Major Leagues. (R. 1312) Allocating all of these costs among this small minority allegedly yields a figure of $316,000 per player. Resp. Brief p. 10. This technique obviously disregards the fact that minor league players, their teams and the scouting system have an economic function and justification wholly independent of the goal of producing major league ball players. Over 10 million persons saw minor league baseball in 1969. (Def. Feeney's Ex. I) As recently as 1949, the minor leagues played to nearly 42 million persons, and until recently were operated at a *profit* by the majors. Celler Report, at 107-108.

lates common law and constitutes "involuntary servitude"); *Blake* v. *Frick*, 20 Misc. 2d 520, 524, 191 N.Y.S. 2d 177, 181 (Sup.Ct.), app. dismissed, 9 App. Div. 2d 893, 199 N.Y.S. 2d 396 (1959) (challenge to the Uniform Players' Contract states claim under New York state antitrust law). If the courts below failed to make the necessary "particularized inquiry" into the impact of any state's law before deeming it preempted, and they did so fail, it was not for want of "assistance."

E. The so-called labor exemption has nothing to do with this case, which involves imposition by the club owners of a unique set of restraints both inside and outside the bargaining unit, and their enforcement by worldwide blacklist and group boycott.

Petitioner has previously observed that for half a century Baseball has sought to resist regulation by every forum to which it has been brought by asserting that it was always "some other forum" which alone had jurisdiction. Petitioner pointed out, for example, that Baseball formally represented to this Court in 1922 and again in 1953 that it should declare federal antitrust laws inapplicable to Baseball because state and local laws were "entirely competent to reach and deal with any evil in the sport," to state courts that only federal regulation was permissible, and to Congress that legislation to correct the system's obvious abuses was unnecessary because "the legality of the reserve clause will be tested" in the courts. Pet. Brief p. 39. Respondents protest this characterization of their tactics; they insist that they never took such inconsistent positions. Resp. Brief p. 22. But they do not deny or explain either the examples of their own representations collected in petitioner's brief or respondent Kuhn's admission under cross-examination of

the accuracy of the Celler Report's account of Baseball's representation to Congress.[6] (A. 273)

Unable to persuade the National Labor Relations Board that professional baseball is immune from the labor laws, and afraid that *Toolson* no longer provides reliable insulation from the antitrust laws, Baseball once again seeks to persuade the forum to which it has been brought that it is someone else—this time the Labor Board—that alone has jurisdiction in the matter. It should not be permitted to succeed.

The so-called labor exemption issue was not passed upon below, nor was it principally relied upon in oral argument in the Court of Appeals. But Baseball seeks a ruling that the labor laws exempt from antitrust scrutiny a professional team sport's arrangements for eliminating competition in the recruitment of personnel. Its thesis is that such arrangements are "wages, hours, and other terms and conditions of employment," therefore mandatory subjects of bargaining, and in consequence exempt from the Sherman Act. The Court should not accept the thesis, for its consequences are intolerable, and the thesis itself does not survive analysis.

1. *Baseball asks the Court to overrule Radovich:* What Baseball asks—for there is no way to confine its thesis to professional baseball—is that the Court re-

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[6] The Celler Report, in which respondents purport to find legislative sanction for the reserve system (Resp. Brief pp. 8, 9), concludes at p. 232 that "Organized Baseball, represented by eminent counsel [respondents' present counsel, including then attorney Kuhn], has assured the subcommittee that the legality of the reserve clause will be tested by the rule of reason. . . . Legislation is not necessary until the reasonableness of the reserve rules has been tested by the courts."

view not *Toolson* v. *New York Yankees,* 345 U.S. 356 (1953), but *Radovich* v. *National Football League,* 352 U.S. 445 (1957), where the identical labor exemption argument was advanced by professional football[7] and summarily rejected by this Court as "lacking in merit." 352 U.S. at 454. What Baseball asks is that the Court eliminate the conceded anomaly of Baseball's unique position, not by subjecting Baseball to the same antitrust regulation which has been applied to other professional team sports without adverse effect and without the harassment which Baseball purports to fear, but rather by extending the same dubious immunity to professional football, basketball, hockey and soccer. The Court is asked to scrap the entire structure of federal antitrust regulation which has grown up around professional team sports—except baseball—during the past fifteen years, and under whose aegis owners have been induced gradually to ameliorate unreasonable restraints upon player freedom.[8] The Court is asked, in effect, to overturn *Robertson* v. *National Basketball Association,* 70 Civ. 1526 (S.D.N.Y. May 4, 1970), where the two professional basketball leagues

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[7] See Brief for Resp. in No. 94, 1956 Term, pp. 59-63. Football argued unsuccessfully, and in language identical to that now advanced by Baseball, that "the allegations of the complaint reveal nothing more than a controversy between the employee and his employer and their association concerning terms and conditions of employment." *Id.,* at 60.

[8] Respondents stress the desirability of having the parties to the collective bargaining process, not the courts, work out necessary changes in the reserve system. Resp. Brief pp. 38-39. But experience in the other professional team sports shows that such negotiations are more fruitful when conducted within the parameters of the law, when bargaining is confined to what the parties believe to be legal alternatives, and when the owners are unable to hide behind an "immunity."

were enjoined from adopting a common draft until they obtain legislative permission, and all other lower court decisions which have had the salutary effect of domesticating professional team sports. See, e.g., *Denver Rockets* v. *All-Pro Management, Inc.*, 325 F. Supp. 1049 (C.D. Calif. 1971); Cf. *Haywood* v. *National Basketball Association*, 401 U.S. 1204 (1971) (Douglas, J.). Can it be that all the commentators are wrong—that it is not *Federal Baseball Club* and *Toolson* which were the mistakes, but *Radovich*?

2. *The labor exemption does not apply:* Analysis of Baseball's contention exposes its untenability. *First,* the lifetime, worldwide restraint unilaterally imposed by club owners upon every professional baseball player's freedom cannot be subsumed under the rubric "wages, hours, and other terms and conditions of employment," for it is too far outside the realm of labor relations experience, and is not the kind of restraint contemplated by the labor laws. *Second,* the decisions of this Court do not insulate from antitrust scrutiny anticompetitive restraints of the type involved in this case, even were they to be embodied in a collective bargaining agreement. *Third,* here they are not collectively agreed to. *Fourth,* the invalidity of the restraints is demonstrated by the fact that the club owners implement them not by legal techniques for enforcing collective bargaining contracts, but by a separate agreement among themselves, long antedating the organization of the Players Association and never changed to this day, to employ a worldwide threat of boycott and blacklist.

a. *The reserve system is not "wages, hours, or other terms and conditions of employment":* There is no authority for the proposition that a labor union can

be compelled to bargain in good faith over an employer's proposal that its members indenture themselves to him or his assignee for life, in return for nothing more than the employer's contractual obligation to pay thirty days' wages upon dismissal. This is exactly what the reserve system does.[9]

Examples come readily to mind. Could United States Steel, for example, compel the Steelworkers to negotiate over a proposal that open hearth men be forbidden to seek employment with any other steel company, anywhere in the world, without United States Steel's permission, in return for so insubstantial a reciprocal obligation? Could IBM obligate its engineers to negotiate over a proposal that they forego—for life—the alternative of employment with any other employer of engineers anywhere in the world, in return for the right only to receive thirty days' pay upon dismissal? Would the Labor Board hold refusal by a union to negotiate over such proposals to be an unfair labor practice? And what court could enforce such contracts, whether individually or collectively negotiated, against the long line of decisions defining the reasonableness of restraints? See, e.g., *Cincinnati Exhibition Co.* v. *Johnson,* 190 Ill. App. 650 (1914) (refusing to enforce a baseball contract for lack of mutuality of

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[9] Section 7(e) of the Uniform Players' Contract, in effect when this suit was brought, provided 30 days' termination pay if a player is released during the season, plus travel expenses home. (A. 27). In 1970, termination pay was increased to 60 days, and next season a player will be entitled to the balance of the season's salary if released after May 15. (A. 421, 498) The 1970 agreement also provides, for the first time, that a major league player may have a representative attend contract bargaining sessions with him. There remains no right to such assistance when a ballplayer, who may be a non-English speaking teenager, signs his initial contract—which subjects him to the reserve system for life.

obligation). Yet Baseball contends that the reserve system, a lifetime indenture—no other words describe it—enforced by worldwide blacklist and boycott, is nothing more than "wages, hours, or other terms and conditions of employment," and therefore a mandatory subject of collective bargaining. As this Court recently observed, "there are limits to what a union or employer may offer or extract [even] in the name of wages." *Mine Workers* v. *Pennington*, 381 U.S. 657, 665 (1965).

b. *Even if collectively agreed to, the reserve system is not exempt:* However the present system is defined, it is not insulated from antitrust accountability. This Court has held that *even* a labor organization, the principal intended beneficiary of the so-called labor exemption, may not escape antitrust liability when it acts, not unilaterally and in the sole interest of its own members, but in concert with employers "to prescribe labor standards outside the bargaining unit." And this is so even when the issue is so central to bargaining as wages. *Mine Workers* v. *Pennington*, 381 U.S. at 668. Compare *Meat Cutters* v. *Jewel Tea Co.*, 381 U.S. 676 (1965). See *Ramsey* v. *Mine Workers*, 401 U.S. 302, 307 (1971). Respondents seek not only to avoid but to obscure the thrust of these decisions by erroneously suggesting that petitioner would have them apply only to employers. They overlook the fact that the entire Court recognized in *Pennington* and *Meat Cutters* that the so-called labor exemption applies to unions and employers alike.

The separate opinion on which respondents focus did express the view that "collective bargaining activity on mandatory subjects of bargaining" is exempt from antitrust regulation, without regard to whether

the union conduct invdlved is "unilateral." *Meat Cutters* v. *Jewel Tea*, 381 U.S. at 732 (concurring opinion). But the author of that opinion agreed with the majority that agreements between unions and nonlabor groups on hard-core restraints like "price-fixing and market allocation" were not exempt. 381 U.S. at 733. And there is no support in any of the opinions filed in *Meat Cutters* for Baseball's essential, if tacit, contention that unilateral, hard-core anticompetitive activity by employers acting alone—the present case—is somehow exempt from antitrust regulation.

c. *The reserve system is not collectively agreed to:* This case is in fact much clearer than *Pennington*, *Meat Cutters* or *Ramsey*, for petitioner does not challenge the fruits of collective bargaining activity. He seeks relief from a scheme—the reserve system—which Baseball admits has been in existence for nearly a century, and which the trial court expressly found was "created and imposed by the club owners long before the arrival of collective bargaining." (A. 108) In short, the reserve system is *not* collectively agreed to.[10] The players' representatives have consistently asserted that the system, as constituted, is illegal and therefore one in which they cannot acquiesce—both on the merits and for fear of incurring antitrust liability. See Statement of Policy, July 28, 1967 (Def. Feeney's Ex. O, A. 447, 453), and the testimony of Marvin Miller, (A. 371-372). After pre-trial argument, the court found that the reserve system was not incorporated in the

[10] Under *Pennington* the only consequence of accepting Respondents' claim that the Major League Players' Association is implicated in the scheme would be to make the Association a potential defendant. There would be no diminution in the club owners' joint and several liability.

initial collective bargaining agreement executed in 1968 and in effect when this suit was brought. (A. 75 n. 51) Moreover, Baseball and the Players Association have agreed in writing that the new 1970 Basic Agreement, which like its predecessor adopts the Uniform Players' Contract, does not incorporate the reserve system. See Def. Feeney's Ex. N. (A. 428)

Until late in 1969—a full year *after* execution of the 1968 agreement—it was Baseball's position that the reserve system was not a mandatory subject of bargaining. See the testimony of Baseball's labor negotiator, John J. Gaherin. (A. 503) Even thereafter Baseball has made no concessions, advanced no proposals, and refused to consider terminating the system's grip even when a player reaches the unsprightly age of 65. See Pet. Brief at p. 43. The real position of the owners, despite their new-found affection for collective bargaining and the labor exemption, is that change can only come at the hands of Congress. What room does that position leave for meaningful bargaining?

d. *Baseball enforces its system by resort to a worldwide blacklist and group boycott:* Finally, there is nothing in the 1968 or 1970 collective bargaining agreements, or in any of the proposals advanced by the Players Association and rejected by the club owners, to implicate the Association in the long-standing concert among Major League club owners to boycott any of their number, or any minor league or Japanese or Latin American club owner, employing a blacklisted player—that is, one who signed a contract to play for a Major League club and has not been given his freedom.

The very existence of this unlawful enforcement technique, which imposes the reserve system far beyond the bargaining unit, reflects the club owners' judgment that the reserve system is not collectively agreed to and cannot be enforced by conventional legal remedies. Even if we were to assume, for purposes of argument, that the Major League club owners and the Major League Baseball Players Association could lawfully agree that players are to negotiate only with present employers or their assignees,[11] *Meat Cutters* and *Pennington* would not permit the owners, either alone or in concert with the players, to agree to implement and enforce these restraints by resort to a blacklist of players or group boycott of one another, or of other potential employers. American automobile manufacturers may, for example, jointly fashion a common position with respect to issues arising in labor negotiations. But would anyone suggest that they may, with impunity under the antitrust laws, agree to blacklist employees on an industry-wide basis, or refuse to supply parts or goods or services to any participating manufacturer who fails to abide by its agreement, or to any foreign manufacturer who takes a different position? Such techniques are *per se* violations of the antitrust laws, whatever their purported excuse. *United States* v. *General Motors,* 384 U.S. 127 (1966); *Radiant Burners,*

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[11] This assumption is only for purposes of argument. In *Meat Cutters,* 381 U.S. at 693, Mr. Justice White noted that a collective bargaining agreement whose purpose was "to protect one group of employers from competition by another . . . is conduct that is not exempt from the Sherman Act." But the Celler Report found that one of the historic functions of Baseball's reserve system has been to serve "as a war measure to combat competition and protect organized baseball's monopoly position." Celler Report, p. 221.

Inc. v. *People's Gas Light & Coke Co.*, 364 U.S. 656 (1961); *Klor's, Inc.* v. *Broadway-Hale Stores*, 359 U.S. 207 (1959).

CONCLUSION

The reserve clause is an indentured servitude that works upon all professional baseball players through a worldwide blacklist and group boycott. Until this Court brings it within the purposes of the Thirteenth Amendment, which freed Americans from bondage,[12] and the Sherman Act, the charter of our economic liberties, it will continue to be a blight upon our national sport.

What happened two years ago to petitioner now threatens another baseball star. Vida Blue of the Oakland Athletics was the single biggest gate attraction in the American League last year, and the winner of both the League's "Most Valuable Player Award" and the Cy Young Award. When he tried this year to raise his salary from $14,750 to the salary level of comparable players, the man who "reserves" him refused to offer more than $50,000. Indeed, his owner coupled the refusal with a threat only a baseball club owner could make: "I won't trade him and I won't sell him. Either he accepts what we have offered or he's through in baseball."[13]

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[12] The petitioner has from the outset asserted that the reserve clause constitutes involuntary servitude in violation of the Thirteenth Amendment. He does not abandon that argument. This Court has held that it is involuntary servitude to force a man to work for an employer. See, *Pollock* v. *Williams*, 322 U.S. 4 (1944), *Hodges* v. *United States*, 203 U.S. 1 (1906). Petitioner contends that it is involuntary servitude, similarly, to prevent a man from working for someone else.

[13] See Red Smith, quoting Charley Finley, owner of the Oakland Athletics, N. Y. Times, February 17, 1972.

It is time to abolish the anomaly that prevents the most skilled of their profession from offering their skills in a reasonably free market. The Court should reverse the decision below and remand for proceedings not inconsistent with its decision.

Respectfully submitted,

ARTHUR J. GOLDBERG
1101 17th Street, N. W.
Washington, D. C. 20036

JAY H. TOPKIS
345 Park Avenue
New York, New York 10022

Attorneys for Petitioner

DANIEL P. LEVITT
MAX GITTER
PETER WESTEN
RICHARD M. MOSS
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
1775 K Street, N. W.
Washington, D. C. 20006
Of Counsel

FLOOD *v.* KUHN ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 71–32. Argued March 20, 1972—Decided June 19, 1972

Petitioner, a professional baseball player "traded" to another club without his previous knowledge or consent, brought this antitrust suit after being refused the right to make his own contract with another major league team, which is not permitted under the reserve system. The District Court rendered judgment in favor of respondents, and the Court of Appeals affirmed. *Held:* The long-standing exemption of professional baseball from the antitrust laws, *Federal Baseball Club* v. *National League*, 259 U. S. 200 (1922); *Toolson* v. *New York Yankees, Inc.*, 346 U. S. 356 (1953), is an established aberration, in the light of the Court's holding that other interstate professional sports are not similarly exempt, but one in which Congress has acquiesced, and that is entitled to the benefit of *stare decisis*. Removal of the resultant inconsistency at this late date is a matter for legislative, not judicial, resolution. Pp. 269–285.

443 F. 2d 264, affirmed.

BLACKMUN, J., delivered the opinion of the Court, in which STEWART and REHNQUIST, JJ., joined, and in all but Part I of which BURGER, C. J., and WHITE, J., joined. BURGER, C. J., filed a concurring opinion, *post*, p. 285. DOUGLAS, J., *post*, p. 286, and MARSHALL, J., *post*, p. 288, filed dissenting opinions, in which BRENNAN, J., joined. POWELL, J., took no part in the consideration or decision of the case.

Arthur J. Goldberg argued the cause for petitioner. With him on the briefs was *Jay H. Topkis*.

Paul A. Porter argued the cause for respondent Kuhn. *Louis F. Hoynes, Jr.*, argued the cause for respondents Feeney, President of National League of Professional Baseball Clubs, et al. With them on the brief were *Mark F. Hughes, Alexander H. Hadden, James P. Garner, Warren Daane,* and *Jerome I. Chapman.*

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

For the third time in 50 years the Court is asked specifically to rule that professional baseball's reserve system is within the reach of the federal antitrust laws.[1]

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[1] The reserve system, publicly introduced into baseball contracts in 1887, see *Metropolitan Exhibition Co.* v. *Ewing*, 42 F. 198, 202–204 (CC SDNY 1890), centers in the uniformity of player contracts; the confinement of the player to the club that has him under the contract; the assignability of the player's contract; and the ability of the club annually to renew the contract unilaterally, subject to a stated salary minimum. Thus

A. Rule 3 of the Major League Rules provides in part:

"(a) UNIFORM CONTRACT. To preserve morale and to produce the similarity of conditions necessary to keen competition, the contracts between all clubs and their players in the Major Leagues shall be in a single form which shall be prescribed by the Major League Executive Council. No club shall make a contract different from the uniform contract or a contract containing a non-reserve clause, except with the written approval of the Commissioner. . . .

"(g) TAMPERING. To preserve discipline and competition, and to prevent the enticement of players, coaches, managers and umpires, there shall be no negotiations or dealings respecting employment, either present or prospective, between any player, coach or manager and any club other than the club with which he is under contract or acceptance of terms, or by which he is reserved, or which has the player on its Negotiation List, or between any umpire and any league other than the league with which he is under contract or acceptance of terms, unless the club or league with which he is connected shall have, in writing, expressly authorized such negotiations or dealings prior to their commencement."

B. Rule 9 of the Major League Rules provides in part:

"(a) NOTICE. A club may assign to another club an existing contract with a player. The player, upon receipt of written notice of such assignment, is by his contract bound to serve the assignee.

"After the date of such assignment all rights and obligations of the

Collateral issues of state law and of federal labor policy are also advanced.

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The Game

It is a century and a quarter since the New York Nine defeated the Knickerbockers 23 to 1 on Hoboken's

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assignor clubs thereunder shall become the rights and obligations of the assignee club . . . ."

C. Rules 3 and 9 of the Professional Baseball Rules contain provisions parallel to those just quoted.

D. The Uniform Player's Contract provides in part:

"4. (a) . . . The Player agrees that, in addition to other remedies, the Club shall be entitled to injunctive and other equitable relief to prevent a breach of this contract by the Player, including, among others, the right to enjoin the Player from playing baseball for any other person or organization during the term of this contract."

"5. (a). The Player agrees that, while under contract, and prior to expiration of the Club's right to renew this contract, he will not play baseball otherwise than for the Club, except that the Player may participate in post-season games under the conditions prescribed in the Major League Rules. . . ."

"6. (a) The Player agrees that this contract may be assigned by the Club (and reassigned by any assignee Club) to any other Club in accordance with the Major League Rules and the Professional Baseball Rules."

"10. (a) On or before January 15 (or if a Sunday, then the next preceding business day) of the year next following the last playing season covered by this contract, the Club may tender to the Player a contract for the term of that year by mailing the same to the Player at his address following his signature hereto, or if none be given, then at his last address of record with the Club. If prior to the March 1 next succeeding said January 15, the Player and the Club have not agreed upon the terms of such contract, then on or before 10 days after said March 1, the Club shall have the right by written notice to the Player at said address to renew this contract for the period of one year on the same terms, except that the amount payable to the Player shall be such as the club shall fix in said notice; provided, however, that said amount, if fixed by

Elysian Fields June 19, 1846, with Alexander Jay Cartwright as the instigator and the umpire. The teams were amateur, but the contest marked a significant date in baseball's beginnings. That early game led ultimately to the development of professional baseball and its tightly organized structure.

The Cincinnati Red Stockings came into existence in 1869 upon an outpouring of local pride. With only one Cincinnatian on the payroll, this professional team traveled over 11,000 miles that summer, winning 56 games and tying one. Shortly thereafter, on St. Patrick's Day in 1871, the National Association of Professional Baseball Players was founded and the professional league was born.

The ensuing colorful days are well known. The ardent follower and the student of baseball know of General Abner Doubleday; the formation of the National League in 1876; Chicago's supremacy in the first year's competition under the leadership of Al Spalding and with Cap Anson at third base; the formation of the American Association and then of the Union Association in the 1880's; the introduction of Sunday baseball; interleague warfare with cut-rate admission prices and player raiding; the development of the reserve "clause"; the emergence in 1885 of the Brotherhood of Professional Ball Players, and in 1890 of the Players League; the appearance of the American League, or "junior circuit," in 1901, rising from the minor Western Association; the first World

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a Major League Club, shall be an amount payable at a rate not less than 80% of the rate stipulated for the preceding year.

"(b) The Club's right to renew this contract, as provided in subparagraph (a) of this paragraph 10, and the promise of the Player not to play otherwise than with the Club have been taken into consideration in determining the amount payable under paragraph 2 hereof."